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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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11 DEANDRE ALLEN HAWKINS,

12 v. Plaintiff,

13 CAROLYN COLVIN, Acting Commissioner
14 of Social Security,

15 Defendant.

Case No. 3:13-cv-00299-MMD-WGC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
WILLIAM G. COBB

17 Before the Court is Magistrate Judge William G. Cobb's Report and
18 Recommendation ("R&R") (dkt. no. 20), regarding Plaintiff Deandre Allen Hawkins'
19 Motion for Remand/Reversal (dkt. no. 11) and Defendant Commissioner's Cross-Motion
20 for Summary Judgment (dkt. no. 16). Judge Cobb entered the R&R on August 5, 2014.
21 The Court allowed Plaintiff to file any objections by August 22, 2014 (dkt. no. 20). No
22 objections were filed.

23 This Court "may accept, reject, or modify, in whole or in part, the findings or
24 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
25 timely objects to a magistrate judge's report and recommendation, then the court is
26 required to "make a *de novo* determination of those portions of the [report and
27 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails
28 to object, however, the court is not required to conduct "any review at all . . . of any issue

1 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
2 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
3 magistrate judge's report and recommendation where no objections have been filed. See
4 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
5 of review employed by the district court when reviewing a report and recommendation to
6 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
7 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
8 view that district courts are not required to review "any issue that is not the subject of an
9 objection"). Thus, if there is no objection to a magistrate judge's recommendation, then
10 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
11 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
12 which no objection was filed).

13 Nevertheless, this Court finds it appropriate to engage in a *de novo* review in
14 order to determine whether to adopt the R&R. The R&R finds that the ALJ erred in failing
15 to set forth legitimate and specific reasons for rejecting portions of the opinions of Dr.
16 Wildman, Plaintiff's non-treating, examining psychologist. The R&R also finds that the ALJ
17 erred in failing to (1) ask the vocational expert ("VE") whether there was a conflict between
18 the evidence provided by the VE and the Dictionary of Occupational Titles ("DOT"), (2)
19 resolve any apparent conflict by eliciting an explanation from the VE and determining
20 whether it was reasonable, and (3) provide a basis for relying on the VE's testimony rather
21 than the DOT. The R&R recommends, however, that the ALJ did not err in precluding
22 Plaintiff from continuing to cross-examine the VE regarding her methods. The R&R further
23 recommends remand to the ALJ to develop the record in order to resolve the conflict
24 between the VE's testimony and the DOT and to set forth legally sufficient reasons for
25 rejecting portions of Dr. Wildman's opinions. The Magistrate Judge noted that because the
26 record needs to be developed further, it is not clear from the record that the ALJ would be
27 required to award benefits if Dr. Wildman's opinions were fully credited. Upon review of the
28 R&R and the records in this case, the Court finds good cause to adopt the R&R in full.

1 It is hereby ordered that the R&R (dkt. no. 20) is accepted and adopted. Plaintiff's
2 Motion to Remand (dkt. no. 11) is granted and the Commissioner's Cross-Motion For
3 Summary Judgment (dkt. no. 16) is denied.

4 It is further ordered that the case is remanded to the ALJ for development of the
5 record and further administrative proceedings.

6 DATED THIS 30th day of October 2014.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE